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IN THE SUPREME COURT OF THE  
UNITED STATES,

OCTOBER TERM, 1918.

STRATHEARN STEAMSHIP COM-  
PANY, LIMITED,  
Petitioner,

*against*

JOHN DILLON,  
Respondent.

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Notice.

3

Notice is hereby given that the above named petitioner will, on Monday, June 2, 1919, at the opening of Court on that day, or as soon thereafter as counsel can be heard, upon its petition verified May 15, 1919, and upon a certified transcript of the record in the United States Circuit Court of Appeals for the Fifth Circuit, in the cause entitled "John Dillon vs. Steamship 'Strathearn', Strathearn Steamship Company Limited, a corporation, claimant", including all proceedings therein in said Court, submit a motion, a copy of which, and of said petition and of the brief in support thereof, are herewith served upon you, to the Supreme Court of the United States, in its

- 4 Court Room at the Capitol in the City of Washington, in the District of Columbia.

Dated, May 15, 1919.

RALPH JAMES M. BULLOWA,  
Counsel for Petitioner.

The foregoing notice is hereby accepted, and service of a copy thereof, and of the motion, petition, and brief therein mentioned, is hereby acknowledged this day of May 1919.

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Counsel for Respondent.

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IN THE SUPREME COURT OF THE  
UNITED STATES,

OCTOBER TERM, 1918.

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STRATHEARN STEAMSHIP COM-  
PANY, LIMITED,  
Petitioner,

*against*

JOHN DILLON,  
Respondent.

} Motion.

Now comes Strathearn Steamship Company Limited, a corporation, incorporated and existing under the laws of the Kingdom of Great Britain,

by Ralph James M. Bullowa, its counsel, and 7  
moves this Honorable Court that it shall by cer-  
tiorari or other proper process, directed to the  
Honorable the Judges of the United States Cir-  
cuit Court of Appeals for the Fifth Circuit, re-  
quire said Court to certify to this Court for its  
review and determination a certain cause in said  
Court lately pending entitled "John Dillon, vs.  
Steamship 'Strathearn', Strathearn Steamship  
Company Limited, a corporation, Claimant", and  
a full and complete transcript of the record and  
proceedings therein, and to that end it now tenders  
herewith its petition and brief and prays for leave 8  
to file the same together with a certified copy of  
the transcript of said record, including all pro-  
ceedings in said Circuit Court of Appeals.  
Dated, May 15, 1919.

RALPH JAMES M. BULLOWA,  
Counsel for Petitioner,  
No. 32 Broadway,  
New York City.

10 **Petition for Writ of Certiorari to the  
Circuit Court of Appeals for the  
Fifth Circuit.**

IN THE SUPREME COURT OF THE UNITED  
STATES,

OCTOBER TERM, 1918.

|    |   |
|----|---|
| 11 | STRATHEARN STEAMSHIP COMPANY,<br>LIMITED,<br>Petitioner,<br><br><i>against</i><br><br>JOHN DILLON,<br>Respondent. |
|----|---|

To the Honorable the Chief Justice and Associate  
Justices of the Supreme Court of the United  
States:

12 Your petitioner, Strathearn Steamship Com-  
pany, Limited, by Ralph James M. Bullowa, its  
counsel, respectfully shows:

1. Your petitioner is a corporation incorporated  
and existing under the laws of the Kingdom of  
Great Britain. The respondent is likewise a sub-  
ject of the Kingdom of Great Britain.

2. On August 2, 1916, John Dillon the  
respondent, having filed a libel in admiralty  
in the District Court of the United States  
for the Northern District of Florida, against

the steamship "Strathearn" and your petitioner for the sum of \$125.00, alleged to be due him for wages as a carpenter on the steamship "Strathearn". In his libel the respondent alleged that at the dates set forth in the Exhibit annexed thereto and hereto annexed the said steamship "Strathearn", whereof one R. McKenzie was Master, being at the port of Liverpool, England, the said Master by himself or his agent, did hire and ship the libellant to serve as a carpenter on board the said vessel, and that in pursuance thereof, the libellant went on board and performed his duty until he was discharged therefrom, and that at the time of his discharge, the wages earned by him were not paid, although duly demanded. And the libellant further alleged and claimed that the said vessel was at the time of said services engaged in foreign and domestic commerce upon the navigable rivers and waters of the United States, and upon the Atlantic Ocean and Gulf of Mexico, and that while said vessel was lying at the port of Pensacola, Florida, the libellant duly demanded one-half of the amount due him and that payment being refused, his contract had terminated. Your petitioner thereupon filed its answer to said libel and therein denied that the said vessel was engaged in any domestic commerce, that the libellant had been discharged and that any wages were due him. And further answering the libel, your petitioner alleged that the said Steamship "Strathearn" was at all times a vessel of British registry and enrollment; that the port of registry thereof was Glasgow, in Scotland, in the Kingdom of Great Britain; that your petitioner was a corporation of the Kingdom of Great Britain and the owner of said vessel; that

- 16 the libellant was a subject of the Kingdom of Great Britain; that the voyage upon which the services were rendered, commenced at the port of Liverpool, England; that the libellant executed the articles of agreement by which he agreed to serve upon said vessel in the said port of Liverpool on the 8th day of May, 1916; that he thereby agreed to serve upon said steamship on a voyage of not exceeding three years' duration, commencing at Liverpool, proceeding thence to Newport News and/or any other port within the limits set forth in said articles trading in any rotation, and to end at such port in the United Kingdom
- 17 as should be required by the Master; (a copy of said agreement signed by libellant was annexed to said answer, and is hereto annexed and marked Exhibit A); that the said voyage had been commenced as appears by said agreement on May 9, 1916, but had not been concluded, nor had the libellant been discharged at the time of the filing of the libel on August 2, 1916, but that prior to the filing thereof, on the 2nd day of August, 1916, the libellant had left the said vessel without permission and remained away and neglected to perform his duties and failed to return; that the
- 18 libellant and your petitioner at the time of the execution of the said articles of agreement, understood that the same was to be governed by the laws of Great Britain and Ireland, and that by said laws, and more particularly the Act of Parliament of Great Britain and Ireland known as the Merchants' Shipping Act of 1894, the libellant had no just cause to leave said vessel and was not entitled to receive any wages by reason of the breach of said articles of agreement and the same became forfeited and the libellant was guilty of

the offense of desertion. And your petitioner further alleged in its said answer that none of the wages of libellant were earned within the United States of America and that there was no admiralty or maritime jurisdiction in the premises and that the assumption of jurisdiction by the Court was a violation of the Constitution, treaties and laws of the United States and that the Congress of the United States had no jurisdiction and no constitutional right to make laws governing the situation. 19

3. On December 11, 1916, the British Vice Consul at Pensacola filed in the said United States District Court his application for leave to intervene as *amicus curiae*, and as such to file a brief on behalf of the British Government in regard to the construction, application and effect of the provisions of the Act of Congress known as the Seamen's Act, invoked by the libellant in said cause, and the application was duly granted. 20

4. The testimony on behalf of the libellant and your petitioner having been duly taken before a commissioner on August 14, 1916, the case was duly submitted to the Court, and on December 30, 1916, the said District Court entered a decree dismissing the libel. It appeared from the testimony aforesaid that the said vessel "Strathearn" had duly proceeded from Liverpool on May 9, 1916, to Newport News, thence to a port in South America and from the last named port to Pensacola, Florida, where she arrived on the afternoon of July 31, 1916, loaded with a cargo; that the libellant worked throughout the following day, August 1st, but on the morning of August 2nd, 21

- 22 while the vessel was in the port of Pensacola, left the vessel without permission and remained away all day; that before leaving the vessel, the libellant had made some complaint to the Master as to working conditions and left to see the British Consul about that difficulty and while ashore called upon a lawyer and was advised concerning the Seamen's Act and returned to the ship, and claiming to be still in the employment of the ship as carpenter, demanded of the Master of the ship one-half of the wages he then had earned, under the terms of said Seamen's Act, and upon being refused payment brought the libel; that prior to
- 23 the time of that demand nothing had been paid to the libellant on his wages since the ship left a port in South America about two months before; that at the time of the demand, the amount of wages earned by libellant less what had been paid him thereon, was approximately \$125, no part of which was due under the terms of the shipping articles signed by him, which provided for £9 per calendar month payable at the termination of the voyage. The provision of the Seamen's Act, pursuant to which the libellant demanded half wages, is §4530 of the Revised Statutes of the United
- 24 States, as the same was amended by §4 of the Act of Congress approved March 4, 1915, as follows:

“Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs, one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulation in the contract to the contrary shall be void: Pro-



vided, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty-nine of the Revised Statutes: \* \* \* And provided further, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.”

5. The District Judge handed down a memorandum which is reported in the 239th Federal Reporter at page 583. From his opinion it is apparent that the Judge did not consider the application and constitutionality of the Seamen's Act, but decided merely that it was not applicable because of his construction of the five-day provision therein.

6. On June 21, 1917, the libellant filed his notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit, and Assignment of Errors, and the same was duly allowed. The said case was argued before said Circuit Court of Appeals on December 5, 1917. The action of the District Court dismissing the libel was sought to be sustained in said Circuit Court of Appeals on the ground that §4 of the Act of Congress, approved March 4, 1915, entitled “An Act to promote the welfare of American Seamen in the Merchant Marine of the United States; to abolish arrest and imprisonment as a penalty for deser-

- 28 tion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea", in so far as it provides "that this section shall apply to seamen on foreign vessels while in the harbors of the United States, and the Court of the United States shall be open to such seamen for its enforcement", is violative of the Constitution of the United States. Whereupon, said Circuit Court of Appeals desiring the instruction of this Honorable Court for the proper decision of the questions arising in the case touching the constitutional validity of the above-mentioned statutory provision, of its own motion on December 30, 1917, ordered that the following questions and propositions be certified to this Honorable Court in accordance with the provisions of Section 239 of the Judicial Code, to wit:
- 29

"Is section 4530 of the Revised Statutes of the United States, as the same was amended by section 4 of the act of Congress, approved March 4, 1915, entitled 'An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea' violative of the Constitution of the United States?

30

"Is section 4530 of the Revised Statutes of the United States, as the same was amended by the last mentioned act of Congress approved March 4, 1915, violative of the Constitution of the United States in so far as it provides 'That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement?'"

7. On March 8, 1918, the libellant petitioned this Honorable Court for a preference and the motion was granted and the case was thereupon advanced for hearing, and was argued on November 5, 1918. By direction of the British Ambassador, the British Vice Consul at Pensacola, Florida, had applied for and obtained leave to intervene in the Circuit Court of Appeals as *amicus curiae* and submitted a brief in regard to the construction, application and effect of the provisions of the Seamen's Act of March 4, 1915, invoked by the libellant, and a similar application was made in this Honorable Court on behalf of the British Embassy, and by leave of this Honorable Court a brief was submitted on behalf of the British Embassy upon the hearing in this Honorable Court on November 5, 1918. On December 23, 1918, this Honorable Court decided that the certificate failed to comply with Rule 37 of this Court, requiring that it contain a proper statement of the facts on which the questions of law arise, in that the certificate to the Circuit Court of Appeals contained only a partial statement of libellant's contract with the ship and did not state the terms of payment agreed upon, when or where payments were to be made under the contract, or what advancements, if any, were to be made during the voyage, and dismissed the case, because of the failure of the certificate to comply with the said rule. Said decision is reported in 248 U. S. 182. At the same time this Honorable Court decided other questions in regard to the construction and application of said "Seamen's Act" of March 4, 1915, as presented by the cases of Sandberg vs. McDonald, Claimant of the British ship "Talus"

- 34 reported in 248 U. S. 185, and Neilson vs. Rhine Shipping Company, Claimant of the sailing ship "Rhine", and Hardy vs. Shepard & Morse Lumber Company, Claimant of the barkentine "Windrush" reported in 248 U. S. 205, but did not determine the questions involved in this case, upon which the decisions of the lower courts have been conflicting and which have not been determined by this Court.

8. Thereafter and on March 24, 1919, the said Circuit Court of Appeals for the Fifth Circuit, without hearing any further argument, handed  
35 down a decision holding that the libellant's demand was not premature and that the said District Court for the Northern District of Florida erred in dismissing the libel, and reversed the decree of that Court, on the ground that in the opinion of said Circuit Court of Appeals the provision of the Seamen's Act in question was applicable and was not invalid, and a decree of reversal was accordingly entered on March 24, 1919, in said Court.

- Your Petitioner is advised that this Court has power and jurisdiction to review said decision and judgment of said Circuit Court of Appeals by  
36 Certiorari and that this is a proper case for the exercise of such jurisdiction for the following reasons, among others:

(a) Your petitioner, as owner of a British vessel, while within the jurisdiction of the United States was subjected to the provisions of the Seamen's Act with respect to the payment of wages to the libellant, a British subject, contrary to the terms of the contract lawfully entered into between them in the Kingdom of Great Britain, and in disregard thereof.

(b) This cause involves questions of great general importance in regard to the right of British and other foreign vessels to trade with the United States without being subject to conditions with respect to their engagements with British and other alien subjects entered into without the jurisdiction of the United States, and in accordance with the law of the place where entered into, and in regard to the power of the Congress of the United States to make laws conferring rights upon foreign seamen upon foreign vessels while within the jurisdiction of the United States to violate contract obligations lawfully entered into in other jurisdictions, and in regard to the construction and application of the Act of Congress of March 4, 1915, invoked by the libellant. 37 38

(c) It is of great importance that the questions involved in this case should be adjudicated by an authoritative decision of this Honorable Court.

WHEREFORE your petitioner humbly prays that a Writ of Certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and proceedings of said court in said cause entitled "*John Dillon v. Steamship 'Strathearn',* Strathearn Steamship Company, Limited a corporation, claimant" and to the end that the said cause may be reviewed and determined by this Court and the said judgment or decree of the said Circuit Court of Appeals may be in all respects 39

40 reversed, and that your petitioner may have such other or further remedy or relief in the premises as to this Court may seem just and proper.

And your petitioner will ever pray.

RALPH JAMES M. BULLOWA,  
Counsel for Petitioner,  
No. 32 Broadway,  
New York City.

STATE and COUNTY OF NEW YORK, ss.:

41 RALPH JAMES M. BULLOWA, being duly sworn, says that he is of counsel for the petitioner herein, and that the allegations of said petition are true as he verily believes.

RALPH JAMES M. BULLOWA.

Sworn to before me this)  
15th day of May, 1919. }

ALEXANDER BEGG,  
Notary Public #86,  
New York County.

[SEAL.]

**Exhibit A.**

43

**AGREEMENT AND ACCOUNT OF CREW,  
FOREIGN-GOING SHIP.**

The term "Foreign-Going Ship" means every ship employed in trading or going between some place or places in the United Kingdom and some place or places situate beyond the Coasts of the United Kingdom, the Islands of Guernsey, Sark, Jersey, Alderney, and Man, and the Continent of Europe, between the River Elbe and Brest inclusive.

Any Erasure, Interlineation or Alteration in this Agreement will be void unless made with the consent of the persons interested, and attested by some Superintendent of a Mercantile Marine Office, or Consular or Colonial Officer. 44

Name of Ship—Strathearn.

Official No.—121282.

Port of Registry—Glasgow.

Port No. and Date of Register—104, 1905.

Registered Tonnage—Gross, 4419; Net, 2844.

Nominal Horse Power of Engine (if any)—352.

Registered Managing Owner or Manager:

Name—Burrell & Son. 45

Address (State No. of House, Street and Town)  
—54 Georges Sq. Glasgow.

No. of Seamen for whom accommodation is certified—45.

The several persons whose names are hereto subscribed and whose descriptions are contained herein, and of whom nine are engaged as sailors, hereby agree to serve on board the said ship, in the several capacities expressed against their

15

- 46 respective names, on a voyage from of not exceeding three years' duration to any ports or places within the limits of 75° North and 60° South Latitude. Commencing at Liverpool—proceeding thence to Newport News and (or) any other ports within the above limits, trading in any rotation, and to end at such port in the United Kingdom, as may be required by the Master.

- In all cases of salvage awards, notwithstanding anything herein provided the rating of Chief Officers shall be deemed to be the same as that of the Chief Engineer, the rating of the second officers that of the second engineer and the 3rd offs. that of the 3rd Eng's. Apprentices who have not completed two years' service shall be deemed of the rating of an O. S. and those Apprentices of over two years' service, the rating of an AB.
- 47

- And the crew agree to conduct themselves in an orderly faithful, honest, and sober manner, and to be at all times diligent in their respective duties, and to be obedient to the lawful commands of the Master, or of any person who shall lawfully succeed him, and of their Superior Officers, in everything relating to the said Ship and the Stores and Cargo thereof, whether on board, in boats, or on shore; in consideration of which services to be duly performed, the said master hereby agrees to pay to the said Crew as wages the sums against their names respectively expressed, and to supply them with provisions according to the scale on the other side hereof.
- 48

And it is hereby agreed that any embezzlement or wilful or negligent destruction of any part of the Ship's cargo or stores shall be made good to the Owner out of the wages of the person guilty of the same.



And it is further agreed, that if any seaman enters himself in a capacity for which he is incompetent, he is liable to be disrated. 49

And it is also agreed, that the Regulations authorized by the Board of Trade, which are printed herein and numbered 166 are adopted by the parties hereto, and shall be considered as embodied in this Agreement. And it is also agreed that if any member of the crew considers himself to be aggrieved by any breach of the Agreement or otherwise, he shall represent the same to the Master or officer in charge of the ship in a quiet and orderly manner, who shall thereupon take such steps as the case may require; and it is also stipulated that advances on account and allotments of part of the wages shall be made as specified against the names of the respective seamen in the columns provided for that purpose. 50

And it is also agreed, that

(a) Should any of the crew fail to join at the time specified, the Master may ship substitutes at once.

(b) Seamen and Firemen shall keep their respective forecastles clean and shall leave them so at the termination of the voyage, under a penalty of five shillings for each case of neglect. 51

(c) The Seamen and Firemen shall mutually assist each other in the general duties of the ship.

(d) The crew shall be deemed complete with 25 hands, all told, of whom not less than eight shall be sailors.

Firemen to keep galley supplied with coal. No cash shall be advanced aboard or liberty granted other than at the pleasure of the Master.

- 52 It is further agreed that in addition to the rates of pay herein mentioned a war risk allowance at the rate of 40/-per calendar month extra will be paid during the period of the present war to all ratings, except Officers and Engineers as arranged by arbitration and also 20/-per month only to Cooks boy—MR. Stwd. and Cabin boy.

In witness whereof the said parties have subscribed their names herein, on the days mentioned against their respective signatures.

Signed by R. McKenzie, Master.

on the 8th day of May, 1916.

53

Date of Commencement of Voyage—9/5/16.

Port at which Voyage commenced—Liverpool.

These columns to be filled up at the end of the voyage.

Date of Termination of Voyage .....

Port at which voyage terminated .....

Date of Delivery of Lists to Superintendent .....

I hereby declare to the truth of the Entries in this agreement and Account of Crew, etc. ....Master.

(Signed on succeeding page.)

Nationality  
(If British, state  
birthplace)

Signature of  
Crew

Age

Home Address.

|                   |    |         |                          |
|-------------------|----|---------|--------------------------|
| John Dillon ....  | 46 | Kildare | 39 St. Pauls Rd Seacombe |
| Hugo Ronlund ..   | 29 | Russia  | Sailors' Home Liverpool  |
| J. Haikkala ..... | 26 | Do      | Do                       |

54

Particulars of Engagement.

Ship in which he last served,  
and year of Discharge therefrom.

Date and place of signing  
this agreement.

| Year | State name and Official No.<br>or Port she belonged to. | Date   | Place     |
|------|---|--------|-----------|
| 1916 | Knight of Thistle .....                                 | 8/5/16 | Liverpool |
| Do   | Nigerca .....   | Do     | Do        |
| Do   | Hermes .....  | Do     | Do        |

| In what capacity Engaged | Date and hour at which he is to be on board | Amount of wages per week or calendar month | Amount of wages advanced upon or at the time of Engagement |
|--------------------------|---|--|--|
| Carpenter                | .....6 A. M.<br>9/5/16.                     | 9 . .                                      | 5 . .  |
| Seaman                   | .....Do                                     | 6 . .                                      | 3 . .  |
| Do                       | Do  | 6 . .                                      | 3 . .  |

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FILED  
MAY 21 1918

JAMES D. HANE

No. 1033 373

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1918.

STRATHEARN STEAMSHIP COM-  
PANY, LIMITED,  
Petitioner,

*against*

JOHN DILLON,  
Respondent.

**BRIEF IN SUPPORT OF PETITION  
FOR CERTIORARI.**

**Statement.**

This is an application for a Writ of Certiorari under §240 of the Judicial Code to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit, reversing a decree of the United States District Court for the Northern District of Florida, dismissing a libel in admiralty by the present respondent against the petitioner.

The material facts, the questions involved, and their great general importance, are succinctly set forth in the Petition and it is unnecessary to burden the Court with a repetition of them in this brief.

## **BRIEF OF THE ARGUMENT.**

### **POINT I.**

The respondent's case does not fall within the provisions of the statute in question because it was not intended to apply to a foreign seaman entering into a valid contract in a foreign port for service on a foreign vessel.

### **POINT II.**

As construed by the court below this statute would violate the constitution of the United States and would be beyond the legislative power of Congress.

### **POINT III.**

The opinion of the Circuit Court of Appeals ignores the opinion of this Honorable Court in the "Talus," "Rhine" and "Windrush" cases and is inconsistent with them.

## POINT I.

**The respondent's case does not fall within the provisions of the statute in question because it was not intended to apply to a foreign seamen entering into a valid contract in a foreign port for service on a foreign vessel.**

The portion of the statute here to be discussed is the last proviso of the section in question which is as follows:

“And, provided further that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.”

This proviso does not in terms apply to foreign seamen. The purpose of the Act may be fulfilled without broadening its meaning to include all foreign seamen. It is “An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest, and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea”. The title may be looked to as an aid in the construction of an act and it indicates that Congress had in view American seamen only.

If the scope of the Act is so broadened by this proviso as to include the respondent, that is, a British seaman serving on a British vessel under a contract with another British subject made in Great Britain, it is necessary to impute to Con-

gress an intention to enact legislation having force beyond the territory of the United States; to interfere with friendly foreigners by destroying the contracts which they have made between themselves at home merely because their ships visit our ports; and to interfere with and attempt to control the relations between the subjects of a foreign friendly power aboard their own ships while they are temporarily in American waters. The language of the proviso does not require such a construction. It may readily be so construed as to avoid such results by excluding from its operation foreign seamen on foreign vessels under agreements made in foreign countries.

It was contended by the libellant below that the object of Congress was to make the seamen a "free man". "He must be within his right, if he chooses to leave the vessel in any safe place, and he must have the right to draw at least half of the wages due him in any harbor". \* \* \* The seaman's physical needs would hold him in the vessel with a stronger grip than the threat of imprisonment" (American Seaman by Hon. John E. Raker, p. 13). In American Sea Power and The Seaman's Act by Andrew Furuseth, p. 21 quoting from the report of the Legal Aid Society "As a rule, seamen on foreign ships demand one-half their wages and then quit. The result is, the foreign ships' master must refurnish his vessel with a crew before leaving".

In simple words it is contended that the object of Congress was to encourage desertion from foreign vessels, not to promote the welfare of American seamen.

These principles are much too short sighted

even to be accepted as American principles—they savor of Bolshevism and like such principles fail to accomplish their object. Under British law the breach of a seaman's contract is desertion and the punishment for desertion is imprisonment. What avail is it for a British seaman to desert and to ship on an American vessel with higher wages and when he arrives in a British port to be imprisoned.

The argument further implies that it was the will of Congress to impose its standards not only on behalf of American Seamen but all seamen American or foreign. Fundamentally and radically the argument is at variance with the first principles of our Republic and is an attempt to violate the principles of the sovereignty of each nation and the comity of nations.

“It is believed to be an accepted doctrine that the right of a vessel to be governed in respect of her internal discipline by the laws and regulations of her own country is not forfeited by her entrance into the port of foreign country”

(Moore International Law Digest, Vol. II, p. 335, quoting from Mr. Fish, Secretary of State).

“And so by comity it came to be generally understood among civilized nations, that all matters of discipline and all things done on board which affected only the vessel or those belonging to her \* \* \* should be left by the local government to be dealt with by the authorities of the nation to which the vessel belonged as the laws of that nation, or the interests of its commerce should require.”

Wildenhus's Case, 120 U. S. 1.



If the indirect object of the act, is to cause desertion among British seamen it has undoubtedly accomplished its object. It has been notorious that British ships have been detained in the ports of the United States because their crews have deserted just before sailing. This surely is unfriendly to an ally upon whose vessels at least half of the United States Army was transported to France.

It is wholly inconsistent to construe the effect of this Act and the previous acts of Congress to be that American seamen are subject to American law not only in our own ports but in foreign ports, and at the same time to hold that foreign seamen on foreign vessels shipped in foreign ports are subject to their own law in foreign ports but are subject to American law when at our ports.

## POINT II.

**As construed by the court below this statute would violate the Constitution of the United States and would be beyond the legislative power of Congress.**

As construed by the court below this Act would give respondent wages to which he is not of right entitled under his contract; these same wages it would take from the ship; it would deprive the ship of respondent's services to which, under their contract, it is entitled; and it would take from the ship a right to defend an

action brought by the seaman for wages which under his contract he has not yet earned and to which he is not entitled.

It is plain that at the time and place the shipping articles of the "Strathearn" were executed, the parties to them were not amenable to this Act of Congress. It could in no way be imported into their contract, nor could their contract have been made in contemplation of it. If its provisions have attached to them and to their contract at any time, it was only at the time the "Strathearn" entered a port of the United States. Immediately before that point of time the owners of the ship and the respondent were mutually bound by the terms of their contract. The owners had the right to require the complete performance of it to the end, and had the right to defend such an action as this libel by pleading the contract. Plainly these rights are to be regarded as property, and at the moment of the arrival of the ship in an American port, the Act of Congress, as the respondent would construe it, would have the effect of taking from the owner of the "Strathearn" this property at one stroke. Such a taking of property is prohibited by the Constitution of the United States, and if this statute is given the construction contended for by respondent, it is in violation of the Constitution of the United States and void.

The argument that the effect of the statute is "merely remedial" in opening the Courts of this country to foreign seamen is contrary to the statements (cited *supra*) and to the statute itself. Properly, Congress has refused the forums, provided for the enforcement of its law, to the enforcement of remedies which are contrary to its public policy (such as imprisonment for desertion) and

has made it illegal to enter into a contract contrary to its law within its jurisdiction (The Eudora, 190 U. S., 169), but it is radically different to open its forums not for the enforcement of its law but for the avowed purpose of interfering with and rendering void the contracts, laws and regulations of a friendly power.

The Court below has construed the statute as giving to respondent a new right of action, in derogation of his contract. This is very different from refusing to enforce the contract affirmatively, because it may be deemed contrary to the policy of the statute.

The argument, (derived chiefly from The Kensington, 183 U. S., 263, and the cases referred to in that opinion), that the place of performance governs the interpretation of the contract and that a stipulation in the contract whereby the parties seek to avoid the public policy of the place of performance will be held void, loses sight of the fact that the cases are confined to a contract made in a foreign country to forward merchandise to the United States. The cases of *United States vs. Chavez*, 228 U. S., 525 and *United States vs. Freeman*, 239 U. S., 117, are cases where Congress undertook to control acts to be performed in the United States.

In the instant case it cannot be held that the law of the place of performance is the law of the United States for the reason that the place of performance was not the United States. The place of performance was the "Strathearn," a British ship, and although she was not immune from process while in the ports of the United States, still she did not cease to be British. While amenable to the police power of the United States and

of its several states, "her discipline and all things done on board which affected only the vessel or those belonging to her" must be dealt with according to British law. The agreement to pay the seamen's wages was not to be performed in the United States—the wages were to be paid only upon the return of the vessel to a port in the United Kingdom except as the Master might voluntarily make prior payments.

The temporary stay in a port of the United States cannot be held to take away the right of the owner to the security, which he held for the performance of the seamen's contract, by giving the seaman a right to the payment of one half of such security upon demand.

### POINT III.

**The opinion of the Circuit Court of Appeals ignores the opinion of this Honorable Court in the "Talus", "Rhine" and "Windrush" cases and is inconsistent with them.**

In the "Talus" case (*Sandberg vs. McDonald*, 248 U. S. 185) this Court construed and applied §11 of the Seamen's Act of 1915. The "Talus" was a British ship and the libellants in that case were citizens or subjects of nations other than the United States, and as in the instant case had shipped on the vessel in the United Kingdom and without the United States, and remained in her service until they left her in a port of the United States. Prior to shipping, the libellants

in the "Talus" case had lawfully received at Liverpool, England, certain advances on account of their wages. As in the instant case, the libellants in that case, while in a port of the United States, demanded under §4 of the "Seamen's Act" one half of the wages earned by them to the date of the demand. The master complied with the demand but deducted from the payment, the advances theretofore made including those made in Liverpool. The deduction of the advances was claimed by the libellants to be in violation of §11 of the "Seamen's Act" which made it unlawful to pay seamen's wages in advance under penalty of fine and imprisonment, and provided also that the payment should not be a defense in a suit for the recovery of such wages. By the Act, it was expressly provided that the section should apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and also that no clearance should be granted any vessel unless the provisions of the section should have been complied with.

The question before this Honorable Court in the "Talus" case as stated by the Court at page 195, of its opinion, was "Did Congress intend to make invalid the contracts of foreign seamen so far as advance payments of wages is concerned, when the contract and payment was made in a foreign country where the law sanctioned such contract and payment?" And the Court held that it did not.

In the "Rhine" case (*Nielson vs. Rhine Shipping Company* 248 U. S. 205) and in the "Windrush" case (*Hardy vs. Shepard & Morse Lumber Company, id.*) a similar question as in the "Talus" case was presented with respect to the same section of the Act, involving the shipment

of seamen on an *American* vessel in a *foreign* port, and a similar decision was rendered.

These cases were decided at the same time that the former certificate in this case was dismissed. They are not mentioned in the opinion of the Circuit Court of Appeals, which appears to have entirely ignored them. Yet the principal ground upon which their decision was based was applicable to the case at bar, and called for a result exactly opposite to that which was reached. This Court held that it would not impute to Congress the intention to attempt to invalidate lawful foreign contracts, or *by implication* to impose conditions upon the entry of vessels into American ports. This is just what the Court below has sought to do in the present case.

The prayer of the petition should be granted and the Writ of Certiorari issued as prayed.

Respectfully submitted this 15th day of May, 1919.

RALPH JAMES M. BULLOWA,  
Counsel for Petitioner,  
No. 32 Broadway,  
New York City.



Office Supreme Court, U. S.  
FILED

OCT 6 1919

JAMES D. WAHER,  
CLERK.

IN THE  
Supreme Court of the United States,

OCTOBER TERM, 1919.

No. 373 .

STRATHEARN STEAMSHIP COMPANY,  
LIMITED,  
Petitioner,

vs.

JOHN DILLON,  
Respondent.

Now come Frederic R. Coudert, Esq. and Howard Thayer Kingsbury, Esq., counsel for the British Embassy in the United States of America, appearing in the above entitled cause as *amici curiae* by leave of this Honorable Court duly granted on or about June 9th, 1919, and respectfully pray that the motion made on behalf of the petitioner herein to prefer this cause, returnable before this honorable Court on the 6th day of October, 1919, be granted, and respectfully represent that an early hearing and decision of this cause is of great importance to the British Government for the following reasons—

1. Because of the large number of British vessels that enter American ports and the danger that such vessels will be stripped of their crews in such ports and unduly delayed by the necessity of replacing seamen who are induced by the con-



struction placed upon the Seamen's Act of March 4th, 1915, by the Circuit Court of Appeals for the Fifth Circuit in this cause, to collect one-half of their wages and then desert their vessels.

2. Because of the apparent conflict between the decisions of this honorable Court in the cases of *Sandberg vs. McDonald*; *Nielsen vs. Rhine Shipping Company* and *Hardy vs. Shepard & Morse Lumber Company*, decided by this Court on December 23rd, 1918, (248 U. S. 185 and 205), and the decision of the Circuit Court of Appeals for the Fifth Circuit in this cause, whereby the constitutionality, construction and effect of said Seamen's Act of March 4th, 1915, in respect of the questions involved in this cause are left in confusion and uncertainty, to the great prejudice and detriment of all owners of British ships which enter American ports.

WHEREFORE, in order to put an end to such uncertainty and confusion, and that the rights and liabilities of British ship owners in respect of the questions involved in this cause may be speedily determined by an authoritative decision of this honorable Court, it is respectfully prayed that this cause be preferred upon the docket of this Court and set for hearing at some early date convenient to the Court.

Dated October 6th, 1919.

FREDERIC R. COUDERT,  
HOWARD THAYER KINGSBURY,  
Counsel for the British Embassy  
in the United States of America,  
*Amici Curiae*,  
No. 2 Rector Street,  
New York City, N. Y.

Office Supreme Court  
FILED

JUN 2 1918

JAMES D. MAHE

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1918.

No. 1026373

STRATHEARN STEAMSHIP COMPANY,  
Limited,

Petitioner,

vs.

JOHN DILLON,  
Respondent.

Now come Frederic R. Coudert, Esq., and Howard Thayer Kingsbury, Esq., Counsel for the British Embassy in the United States of America, and move for leave to intervene in the above entitled cause as *amici curiae*, and as such *amici curiae* to file a brief, which they tender herewith, in support of the application of the above named petitioner for a writ of *certiorari*, and, in the event that such writ shall be granted, to be heard upon the argument of said cause, upon the following grounds:—

1. Upon the hearing of this cause in the District Court of the United States for the Southern

District of Florida, the British Vice-Consul at Pensacola, by direction of the British Ambassador, intervened by leave of Court as *amicus curiae* and filed a brief by the undersigned as counsel. In the Circuit Court of Appeals for the Fifth Circuit the said British Vice-Consul again intervened by leave of Court as *amicus curiae* and filed a further brief by the undersigned as Counsel. Upon the certification of this cause to this Court the undersigned, as counsel for the British Embassy, intervened as *amici curiae* by leave of this Court granted on April 1st, 1918, and filed a further brief.

2. The questions involved in this cause are of vital importance to the British Government by reason of the large number of British vessels that enter American ports, many of which are employed in the repatriation of the American troops. Upon the construction placed by the Circuit Court of Appeals upon the Act of Congress of March 4th, 1915, known as the "Seamen's Act," such vessels are in great danger of being stripped of their crews in American ports and delayed by the necessity of replacing seamen who are induced, by this opportunity, to collect one half of their wages and then desert their vessels.

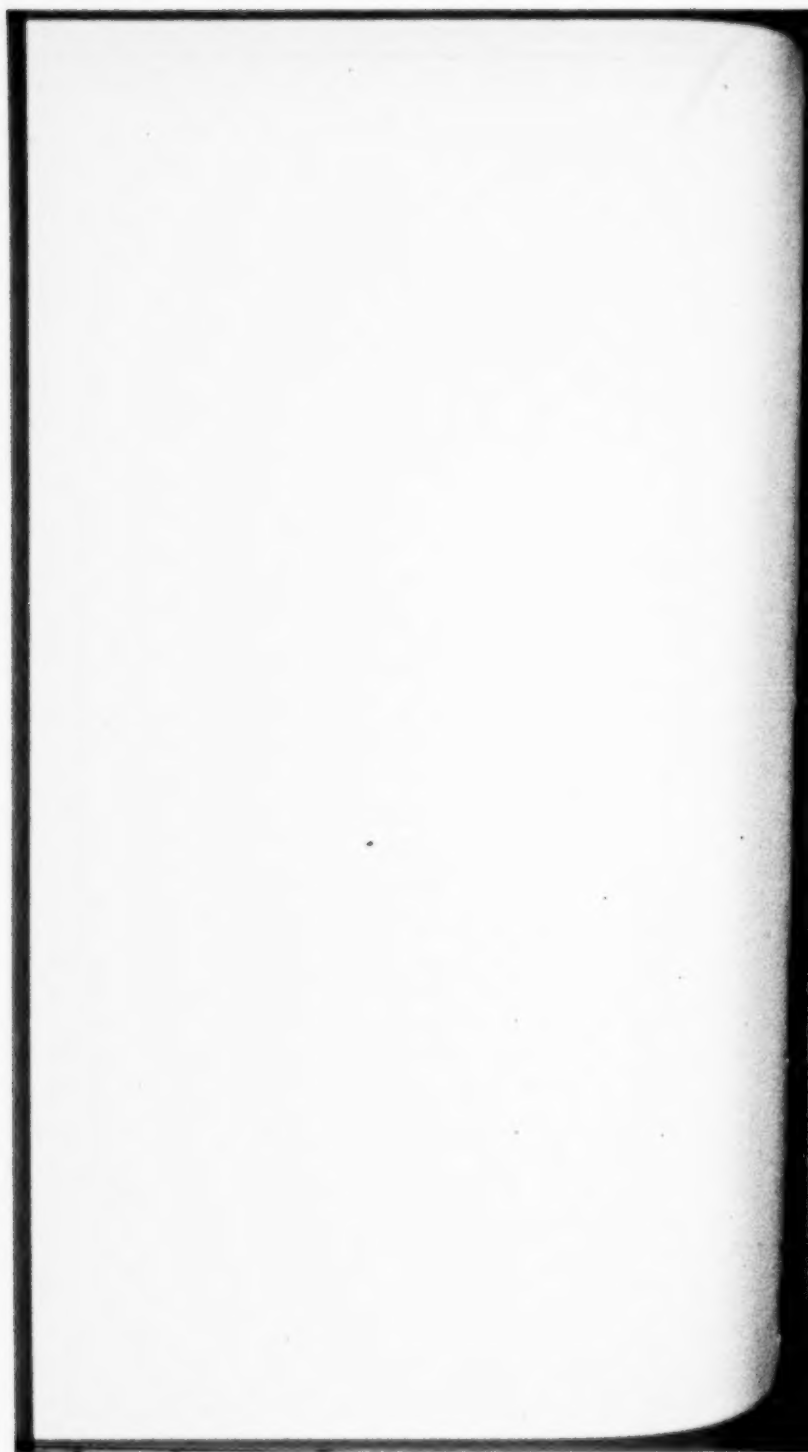
3. On behalf of the British authorities it has been contended that said "Seamen's Act" does not apply to foreign seamen shipped in a foreign port on a foreign vessel under a contract, valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, and that if so construed as to be applicable to such a case, the Statute would exceed the

legislative power of Congress and would violate the Constitution of the United States.

4. In the cases of Sandberg *et al v. McDonald*, claimant of the British Ship "Talus"; Neilson *et al. v. Rhine Shipping Co.*, claimant of the Sailing Ship "Rhine"; and Hardy *et al. v. Shepard & Morse Lumber Company*, claimant of the Barkentine "Windrush"; involving other provisions of said "Seamen's Act," decided by this Court on December 23d, 1918, at the same time when this Court dismissed the certificate in this cause, this Court held that there should not be imputed to Congress the intention to attempt to penalize or invalidate contracts lawfully made in a foreign jurisdiction. The Circuit Court of Appeals in this cause has construed the said "Seamen's Act" in such manner as to invalidate and render nugatory contracts lawfully made in a foreign jurisdiction, and has reached this conclusion without referring to, and apparently without taking into consideration, the said decisions of this Court. It is of great importance to the British Government that the constitutionality, construction, application and effect of said "Seamen's Act" should be determined by this Court in this respect as has been done in other respects by the decisions above mentioned.

Dated June 2nd, 1919.

FREDERIC R. COUDERT,  
HOWARD THAYER KINGSBURY,  
Counsel for the British Embassy in the  
United States of America,  
*Amici Curiae.*  
2 Rector Street, N. Y.



Supreme Court of the United States

OCTOBER TERM, 1917

No. 10,378

STRATHEARN STEAMSHIP COMPANY, Limited,  
*Petitioner.*

*vs.*

JOHN DILLON,  
*Respondent.*

BRIEF OF COUNSEL FOR BRITISH EMBASSY  
AS AMICI CURIAE.

FREDERICK R. COUDERT,  
HOWARD TRAYER KINGSBURY,

*Counsel for British Embassy*

*Amici Curiae*

3 Nassau Street

New York City, N. Y.

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# Supreme Court of the United States,

OCTOBER TERM, 1918.

No. .

STRATHEARN STEAMSHIP COM-  
PANY, LIMITED,  
Petitioner,

*vs.*

JOHN DILLON,  
Respondent.

## **BRIEF OF COUNSEL FOR BRITISH EMBASSY AS AMICI CURIAE.**

### **Statement of Facts.**

This case comes before this Court upon an application by the above named petitioner for a writ of *certiorari* to the Circuit Court of Appeals for the Fifth Circuit. It has already been before this Court upon certification, by such Circuit Court of Appeals, of two questions of law relating to the constitutionality of the "Seamen's Act" of March 4th, 1915. The Certificate was dismissed

by this Court because it failed to contain "a proper statement of the facts on which the questions of law arise", as required by Rule 37 (See *Dillon vs. Strathearn S.S. Co.*, 248 U. S. 182).

It is to be observed that the former certification of this case to this Court was made by the Circuit Court of Appeals of its own motion and without affording to counsel any opportunity to be heard in regard to the form of the Certificate or of the Record. After the dismissal of the Certificate by this Court the Circuit Court of Appeals proceeded to a decision of the cause without hearing any further argument and apparently without taking into consideration the decisions of this Court in the cases of *Sandberg vs. McDonald*, 248 U. S. 185, and *Neilson vs. Rhine Shipping Co.*, and *Hardy vs. Shepard & Morse Lumber Co.*, reported together in 248 U. S. 205, which were argued before this Court at the same time as this cause, and decided by it on the same date on which it dismissed the Certificate.

Notice has been given by the *Strathearn Steamship Co. Ltd.*, the claimant in the District Court and the appellee in the Circuit Court of Appeals, of the presentation to this Court on June 2nd, 1919, of a petition for *certiorari* and it is in support of such application that leave is sought to submit this brief.

The facts involved and the proceedings heretofore had are fully set forth in the petition for *certiorari* and it is deemed unnecessary to repeat them at length in this brief. The importance to the British Government of an authoritative decision by this Court upon the constitutionality, construction and effect of the provision of the "Seamen's Act" involved in this cause is ob-

vious. It will be shown in this brief that the decision of the Circuit Court of Appeals in this cause is at variance with the principles upon which the decisions of this Court in the other cases above cited, arising out of other provisions of the "Seamen's Act", are based.

The provision here in question is contained in §4530 of the United States Revised Statutes, as amended by the "Seamen's Act". This section requires payment on demand of one-half part of a seaman's wages at any port where the vessel, during the voyage, shall load or deliver cargo. It further provides that any failure on the part of the Master to comply with the demand shall release the seaman from his contract and entitle him to full payment of the wages earned, and further

"that this Section shall apply to seamen on  
"foreign vessels while in harbors of the  
"United States, and the Courts of the United  
"States shall be open to such seamen for its  
"enforcement".

In the case at bar the District Court held that the rights of the parties were to be determined by the foreign law to which they were subject, that the libellant's demand was premature and that the case did not come within the purview of the "Seamen's Act". In the Circuit Court of Appeals the libellant-appellant contended that this construction was incorrect; that libellant's demand was not premature and that the American statute, not the law of the flag, applied and governed the case. The claimant-appellee, and the British authorities, replied that the statute, if so construed, would be unconstitutional. The Circuit Court of Appeals held that the demand was not premature;

that the statute applied; that the original shipping contract became unenforceable when the vessel came within American jurisdiction and thereupon ceased to govern the relations between the parties; and that the statute, as so construed, did not violate the Constitution of the United States or exceed the legislative power of Congress. It is this decision of which a review is now sought.

### **Brief of the Argument.**

1. The decision of the Circuit Court of Appeals is at variance with the principles enunciated by this Court in the other cases arising out of the "Seamen's Act".

2. The statute should not be so construed as to invalidate contracts lawfully made between foreigners in a foreign jurisdiction.

3. As construed by the Circuit Court of Appeals the statute exceeds the legislative power of Congress and violates the Constitution of the United States.

### **POINT I.**

**The decision of the Circuit Court of Appeals is at variance with the principles enunciated by this Court in the other cases arising out of the "Seamen's Act".**

These cases have already been cited (*supra* page 2). In the *Talus* case (*Sandberg vs. McDonald*) the question arose in regard to ad-

vances made upon a British ship at Liverpool, England, to seamen who were citizens or subjects of nations other than the United States. This the Court described as "a practice usual and customary and not forbidden by the laws of Great Britain". In making payment of wages to certain of these seamen at an American port the Master deducted the amount of the advances. The seamen thereupon brought suit and invoked the provisions of §11 of the Seamen's Act, which forbids, under penalty of fine and imprisonment, the payment of any advance wages; provides "that this Section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States;" and forbids the clearance of any vessel not complying the provisions of the Section.

This Court held that Congress did not intend to invalidate the contracts of foreign seamen lawfully made in a foreign country, or to annul such contracts as a condition upon which foreign vessels might enter American ports, and limited the application of the statute to advance payments made in the United States.

In the *Rhine* and *Windrush* cases (*Neilson vs. Rhine Shipping Company*), the same rule was applied to a case in which advance payments had been made by the Master of an American vessel in a foreign port. It was pointed out that although American vessels might be controlled by Congressional legislation as to contracts made in foreign ports, Congress did not intend to place American shipping at the disadvantage of an inability to obtain seamen in foreign ports, when compared with the vessels of other nations which are manned by complying with local usage. In these cases this

Court made it clear that it would not impute to Congress an intention to ignore the inherent territorial limitations upon legislation, as it would do by attempting to invalidate foreign contracts, lawful where made.

The decision of the Circuit Court of Appeals in this case is wholly at variance with these principles. That Court held that the clause "seamen on foreign vessels while in harbors of the United States" was intended to include all seamen of whatever nationality and wherever shipped. It based this decision upon the ground that the clause "the Courts of the United States shall be open to such seamen for its enforcement" would not have been inserted if only American seamen had been contemplated, since "legislation was not needed to open the Courts of the United States to them". The title of the Act was disregarded because it was considered that the clause in question might have been intended to encourage "competition of American seamen in foreign ports with foreign seamen for service on foreign vessels". The Court further held that the enforcement of the provision in question in the case at bar did not have the effect of nullifying a contract validly entered into between foreigners in a foreign jurisdiction, but merely rendered the contract unenforceable in this country because in conflict with its public policy.

This decision ignores the fundamental distinction between taking away a remedy for the enforcement of a foreign contract, valid where made, but at variance with the local law and public policy of this country, and creating an independent and enforceable pecuniary liability in direct contravention of a valid foreign contract. As pointed



out by this Court in the *Talus* case, Congress cannot prevent the making of contracts in other jurisdictions, and foreign countries may and will continue to permit such contracts as they see fit without regard to the declared law or policy of this country. This Court conceded for the purpose of the argument "that Congress might have legislated to annul such contracts as a condition upon "which foreign vessels might enter the ports of "the United States" but pointed out that no such provision was "specifically made in the statute" and that so important a regulation was not to be "gathered from implication".

Since advance payments, which are specifically forbidden and even made criminal in this country, may nevertheless be lawfully contracted for and made in a foreign jurisdiction, in like manner contracts concluded in a foreign jurisdiction, may lawfully be made dependent upon the completion of the agreed service.

The decision of the Circuit Court of Appeals appears to have been based upon three decisions of this Court, none of which is applicable. They are as follows:—

(a) *Union Trust Co. vs. Grosman*, 245 U. S. 412.

In that case it was held that the District Court of the United States, sitting in Texas, properly refused to enforce a contract made in Illinois by a married woman domiciled in Texas and under the law of Texas incompetent to contract as a *feme sole*. This decision merely refused affirmative enforcement of a contract invalid by the law of the forum and the law of the defendant's domicile. It did not undertake to enforce an independent

liability, contrary to the provisions of a contract lawful under both the *lex loci contractus* and the *lex domicilii* of the parties.

(b) *Patterson vs. Bark Eudora*, 190 U. S. 169.

This decision held that the former statute against advance payments to seamen was applicable to advance payments *made in an American port*, although on a foreign vessel. The limitations upon this decision were fully discussed by this Court in the *Talus* case, *supra*, and this Court at the same time approved the converse of the doctrine as laid down in *The State of Maine*, 22 Fed. Rep. 734, and applied it in the *Rhine* and *Windrush* cases (see p. 2, *ante*).

(c) *The Kensington*, 183 U. S. 263.

In this case this Court held that where a contract was made in a foreign country to be performed in part in the United States by the transportation of goods thereto, the carrier could not relieve itself from the consequence of its own negligence by a stipulation to that effect, contrary to the public policy of the United States as declared in the "Harter Act", although such a stipulation was permitted by the law of Belgium, where the ticket constituting the contract was finally countersigned. There, by the express terms of the contract, final performance was to take place in the United States; in the case at bar the contract was to be performed entirely upon a British vessel, which might or might not enter any port of the United States at all.

In the case at bar the Circuit Court of Appeals further held that:

“The foreign contract does not prevent the  
“relations of the parties to it being gov-  
“erned by the law of the place where the sea-  
“men and the ship are.”

If this is the law, then the contract of a seaman, as expressed in his Shipping Articles, would be governed by a different law at every foreign port where the vessel might touch, and would become so kaleidoscopic and chameleon-like as to leave the legal relations of the parties in hopeless confusion.

The Circuit Court of Appeals also referred to Wildenhus' Case, 120 U. S. 1. There, however, this Court merely held that the local Courts of this country had jurisdiction over a *crime* committed on board a foreign vessel in an American port, disturbing the public order of the port, and hence within the express exception of the Treaty with Belgium, which gave consular jurisdiction over the “internal discipline of Belgian vessels in matters not affecting public order”. Upon this wholly inapplicable decision, the Circuit Court of Appeals held that the construction which it placed upon the statute in question did not operate to deprive the ship owner of contract rights without due process of law.

## POINT II.

**The statute should not be so construed as to invalidate contracts lawfully made between foreigners in a foreign jurisdiction.**

Since the construction placed upon the statute in question by the Circuit Court of Appeals is inconsistent with the principles laid down by this Court in the other "Seamen's Act" cases, it remains to consider how that statute should be construed.

The statute does not apply in terms to *foreign* seamen, shipped in a *foreign* port on a *foreign* vessel, which thereafter comes into a harbor of the United States to load or deliver cargo. The provision under consideration reads:—

"This section shall apply to seamen on  
"foreign vessels while in harbors of the  
"United States."

It is not expressly made applicable in this respect to *foreign* seamen and the purpose of the Act can be fulfilled without thus straining its language.

The title of the Act is:

"An Act to promote the welfare of *American*  
"seamen in the merchant marine of the  
"United States; to abolish arrest and im-  
"prisonment as a penalty for desertion and  
"to secure the abrogation of treaty provi-  
"sions in relation thereto; and to promote  
"safety at sea."

It is not an Act to promote the welfare of *foreign* seamen, or of seamen generally, but of

*American* seamen, and it should not be extended by construction so as to apply to foreign seamen in cases where such application would conflict with their existing contractual or statutory duties and obligations.

It is true that the title of an Act may not "be used to add to or take from the body of the statute," but it may and should "be considered in determining the intent of the legislature."

See *Holy Trinity Church vs. United States*, 143 U. S. 457, at p. 462.

See also *United States vs. Palmer*, 3 Wheat. 610, in which Chief Justice Marshall said, at p. 631:

"The words of the section are in terms of 'unlimited extent. The words 'any person' or 'persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the legislature intended to apply them. \* \* \* The title of an Act cannot control its words, but may furnish some aid in showing what was in the mind of the legislature. The title of this Act is 'An Act for the punishment of certain crimes against the United States'. It would seem that offences against the United States, not offences against the human race, were the crimes which the legislature intended by this law to punish."

So, in the statute under consideration, although the words "seamen on foreign vessels while in harbors of the United States" may be grammatically broad enough to include *all* seamen, foreign as well as American, yet the title of the Act clearly indicates that Congress had in mind American,

not foreign, seamen, as the objects of its solicitude, and it is not to be supposed that Congress was unaware that its action must necessarily be "limited to cases within the jurisdiction" of the United States.

Upon these principles the present Act should be construed as applicable only to seamen shipped in an American port on vessels which remain for a time in or afterwards return to an American port to load or deliver cargo.

There is another construction which was suggested in *Clyma vs. Steamship Ixion*, 237 Fed. Rep. 142, in a decision rendered on exceptions to the libel. There the Court held that since the libel showed

"that wages were *earned while in the port*  
 "of *Seattle*, demand made within the provi-  
 "sions of Section 4530 *supra* as amended,  
 "and payment refused, a cause of action is  
 "stated,"

and the exceptions to the libel were accordingly overruled. The libel has since been dismissed, in an opinion not yet reported on the ground that the issue was disposed of by the decision of this Court in the *Talus* case.

The ruling, made upon the exceptions and afterwards apparently abandoned, much decided that the Act might be applicable to wages actually earned by a foreign seaman on a foreign vessel while in an American port. The construction of the statute thus indicated would at least limit its operation to wages actually earned within the territorial jurisdiction of the United States, although under a foreign flag, and would thus be less disruptive of foreign commerce than the construction adopted by the Circuit Court of Appeals in the case at bar.

Another construction which might be deemed open to consideration would be to make the statute applicable to seamen of American nationality upon foreign or domestic vessels, irrespective of the port of shipment. Seamen are regarded, to a certain extent, as "wards of the Admiralty" the world over, subject to certain disabilities and entitled to special protection. It might be contended that each nation may regulate these disabilities at its own will, and that such disabilities inhere in the personal capacity of each individual and go with him wherever he may be, as a part of his "*statut personnel*", as for certain purposes do the disabilities of infancy and coverture and certain disabilities affecting the validity of marriages. This construction would be to some extent in line with the decision of this Court in *Union Trust Company vs. Grosman*, *supra* (p. 7).

Upon this theory a ship master, engaging an American seaman in a foreign port, would take him with constructive notice of potential disabilities which might become legally operative if he should thereafter be brought within the territorial jurisdiction of his own country. Although this construction would have some logical relation with the general body of international private law, it would be at variance with the well established rule, followed by the District Court in the case at bar, that a seaman, shipping under a foreign flag, is governed by the law of that flag.

See *The Magna Charta*, Fed. Cas. #8953,  
2 Lowell, 136.

*The Egyptian Monarch*, 36 Fed. Rep.  
773.

*Wilson vs. The John Ritson*, 35 Fed. Rep.  
662.

*The Belvidere*, 90 Fed. Rep. 106.

*The Ucayali*, 164 Fed. Rep. 897.

Rainey *vs.* N. Y. & P. S. S. Co., 216 Fed. Rep. 454.

*The Elswick Tower*, 241 Fed. Rep. 706.

The facts in the case at bar do not present this particular situation.

### POINT III.

**As construed by the Circuit Court of Appeals, the statute exceeds the legislative power of Congress and violates the Constitution of the United States.**

The statute cannot be made applicable in such a way as to nullify valid contracts lawfully made between foreigners in a foreign jurisdiction without transcending the legislative powers and jurisdiction of the United States. It is elementary that

“the laws of no nation can justly extend beyond its own territories except so far as regards its own citizens.”

See *The Apollon*, 9 Wheat. 362, at p. 370, per Story, J.

Also Moore's International Law Digest, Vol. 2, §197, p. 213.

This is a general rule of international law based upon fundamental principles of jurisprudence, and is not confined to nations having a legislature created and circumscribed by a written constitution.



In the case at bar the libellant made in England a valid contract to serve for a voyage "not exceeding three years' duration, \* \* \* and to end at such port in the United Kingdom as may be required by the Master." By the express statutes and the general law of the place where the contract was made, and of the nationality to which the vessel and the libellant belonged, this contract bound the libellant to serve out the entire period of employment under penalty of forfeiture of his wages. The British statute on the subject (Merchant Shipping Act of 1894) is quoted in the claimant's answer and is in its essential portions as follows:

§221. If a seaman lawfully engaged \* \* \* deserts from his ship he shall be guilty of the offence of desertion and is liable to forfeit all \* \* \* of the wages which he has earned." (Rec., p. 13).

This British statute is declaratory of the general maritime law of nations, as shown by many authorities, among which special reference may be made to the following:

Abbott on Merchant Ships & Seamen,  
14th Ed., p. 209.

*The Bulmer*, 1 Hag. Adm. 163.

*Button v. Thompson*, L. R., 4 C. P. 330.

*The Baltic Merchants*, 1 Edw. Adm. 86.

It has heretofore been recognized in this country that where a seaman has contracted to serve during a certain voyage he must, in order to recover wages, allege and prove that he had fully performed his contract, or that he had been pre-

vented from doing so by some circumstance amounting to a legal excuse.

See *Wilcox v. Palmer*, 29 Fed. Cas. #17638.

*The Leiderhorn*, 99 Fed. Rep. 1001.

This is in accord with the general rule of the common law that any contract of employment for a definite period is an *entire* contract and must be fully performed to entitle the employee to recover.

See *Spain vs. Arnott*, 2 Stark. 256;

*Lantry vs. Parks*, 8 Cow. 63;

*Faxon vs. Mansfield*, 2 Mass. 147.

The provisions of the Act under consideration are in derogation of these general rules of the common law as long understood and applied in this country as well as in England and are based upon the theory that seamen are a special class requiring peculiar protection and therefore to be deprived within certain limits of the power of free contract. The Act should accordingly be strictly construed and not extended by construction to matters or persons not within the legislative jurisdiction of the United States.

In the "Seamen's Act", Congress does not undertake to require compliance with the provision in question, in the case of foreign seamen on foreign vessels, as a condition of the entry of such foreign vessels into American ports or their clearance therefrom, so that it is not necessary to consider what would be the effect of so extraordinary a departure from the usual course of international comity.

The construction contended for by the British

authorities, namely, that the Act does not apply to wages earned by a foreign seaman shipped in a foreign port on a foreign vessel under an express contract for payment only upon completion of the entire voyage, is not in any way inconsistent with the language of the Act and is in accord with its purpose as expressed in its title, and with the general current of authority.

Upon the construction placed upon the Act by the Circuit Court of Appeals it is in conflict with the Constitution of the United States. By constraining the owners of the *Strathearn* to the payment of moneys contrary to the provisions of an express contract valid where made and of the statutes in force at that time and place, it deprives them of property without due process of law.

If the Act of Congress in question were the Act of a State Legislature it would manifestly be unconstitutional as one "impairing the obligation of contracts" under U. S. Const., Art. 1, §10. This Constitutional prohibition applies specifically to legislation by the States of the Union and is not in terms applicable to the United States. This Court has held, however, in *The Sinking Fund Cases*, 99 U. S. 700, at p. 718, that although the United States

"are not included within the constitutional  
 "prohibition which prevents States from  
 "passing laws impairing the obligation of  
 "contracts, but equally with the States they  
 "are prohibited from depriving persons or  
 "corporations of property without due proc-  
 "ess of law."

It may be that it is within the power of Congress to pass laws impairing the obligation of contracts

to the extent of taking away some of the remedies formerly available for their enforcement. In the present legislation this has been done to a certain degree by abolishing the arrest of seamen for desertion and providing for the abrogation of Treaty stipulations for the use of this remedy by foreign ship-masters. It is also possible that this legislation would be effectual to prevent a suit for damages for breach of contract against a seaman who leaves a foreign ship in an American port after a demand for half wages and refusal of payment.

Upon the construction of this statute adopted by the Circuit Court of Appeals, Congress has not merely *taken away a remedy*, but has attempted to *create an enforceable pecuniary liability* in direct contravention of a contract lawful and valid where made, and to release *one* of the parties from his contract. This violates the constitutional prohibition against the deprivation of "property without due process of law" (U. S. Const., Amendment V). *As well might Congress undertake to impose a fine upon a foreign vessel for an act done wholly within a foreign jurisdiction and there recognized as lawful.*

This principle has been very recently expressed by this Court in *United States v. Freeman*, 239 U. S. 117. This was a prosecution for violation of §240 of the Criminal Code, forbidding the shipment from any foreign country into any State of intoxicating liquors not properly labelled. The Court held that shipment meant transportation from one locality into another and was

"essentially a continuing act whose performance is begun when the package is delivered to the carrier and is completed when it reaches its destination;"

and that

“all will concede that Congress did not intend  
“to do anything so obviously futile as to de-  
“nounce as criminal an act wholly done in a  
“foreign country, such as the delivery to the  
“carrier where the shipment is from a for-  
“eign country into a State.”

In like manner it would be “obviously futile” for Congress to attempt to declare illegal a civil contract, validly made outside of the jurisdiction of the United States by persons owing no allegiance to the United States.

In the case at bar, the contract of employment for an entire voyage, being valid where made, and being beyond the power of Congress to abrogate or affect, is a complete defense to this suit. In addition, there has been a forfeiture by desertion, which not only bars this suit, but any suit based upon the original employment.

A “vested right to an existing defence” is property, and hence within the constitutional protection.

See *Pritchard vs. Norton*, 106 U. S. 124, at p. 132.

Legislation which attempts to take away a vested right under a contract not only impairs the obligation of the contract but is also equivalent to a deprivation of property.

See *Houston & Texas Central Railway vs. Texas*, 170 U. S. 243, 261;

*Angle vs. Chicago, St. Paul &c. R. Co.*, 151 U. S. 1, 19.

The consequences of adopting the construction of the statute placed upon it by the Circuit Court

of Appeals would be disastrous. A seaman who is able to collect half his wages under threat of terminating his contract, and collecting all by legal process if his demand for half is not complied with, may be tempted, by various easily imaginable considerations, to take half his pay, and then desert his ship and let the other half go, whereas, if confronted with the forfeiture of his wages in full, he would doubtless complete his term of employment.

It was admitted by counsel for the present respondent in his brief in the Circuit Court of Appeals that the construction of the Act which he advocated causes "hundreds of seamen" to demand and get half their pay, and "then desert their ships, taking with them what effects they can."

The Courts of this country should protect the merchant vessels of a friendly foreign government against being thus stripped of their crews in American ports and delayed indefinitely while new crews are sought. The express purpose of the Act is to promote the welfare of *American* seamen. Other nations should be allowed to promote the welfare of their own seamen and shipping in such manner as they see fit, so long as their methods do not interfere with the peace and order of American ports. Moreover, under the proper and constitutional construction of the statute here advocated, the peace and order of American ports will not be endangered by the presence of large numbers of deserting seamen, not liable to arrest for such desertion, and difficult to deal with effectually under the American Immigration Laws.

The Act should be given a construction in accordance with the spirit of the United States

Constitution and of general international law, and within the proper sphere and jurisdiction of Congress.

It is elementary that where a statute may be so construed as not to contravene the Constitution, such construction should be adopted, thus avoiding the necessity of directly determining the constitutional question.

See *The Japanese Immigrant Case*, 189 U. S. 86, 101;

*St. Louis Southwestern Ry. Co. vs. State of Arkansas*, 235 U. S. 350, 369;

*Billings vs. United States*, 232 U. S. 261, 279;

*Towne vs. Eisner*, 245 U. S. 418, 425.

This Court is therefore asked to declare that the right conferred by the "Seamen's Act" to demand half wages and terminate the contract on refusal cannot be invoked by a foreign seaman shipped on a foreign vessel in a foreign port, in such a manner as to nullify the seaman's contractual obligations and statutory duties and to cripple the merchant marine of a friendly Government upon which this country is largely dependent for the repatriation of its own troops.

**CONCLUSION.**

**The writ of certiorari should be granted as prayed, to the end that the decision of the Circuit Court of Appeals may be reviewed and reversed by this Court.**

Respectfully submitted this 2nd day of June, 1919.

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